THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.24210 OF 2006

ORAL ORDER:

This writ petition is filed seeking to quash the proceedings of the 1st respondent passed under Section 14-B of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short "the Act"), levying a sum of Rs.10,19,4785/- towards damages for the alleged default in the payment of Provident Fund contribution for the period from September, 1997 to September, 2000.

The petitioner does not dispute the fact that notice dated 24.7.2006 was served on it calling upon to appear in person or through its authorized representative on 9.8.2006 and to show cause as to why the penal damages under Section 14-B of the Act should not be levied. Accordingly, the representative of the petitioner had appeared before the 2nd respondent on 9.8.2006 and at his request the matter was adjourned to 25.8.2006. However, since the documents to substantiate its claim could not be made ready, the petitioner made a further representation, which was received in the Inward Section of the 2nd respondent on 25.8.2006, explaining its financial difficulties and requesting a personal hearing before taking any further action. It was also requested not to take any coercive action for recovery of the damages sought to be imposed under Section 14-B of the Act.

Thereafter, the petitioner was not informed of anything for about three months till the impugned proceedings were served on it on 15.11.2006.

From the impugned proceedings the petitioner came to know that it was set ex parte for its failure to appear on 25.8.2006 and a final order was passed under Section 14-B levying a sum of Rs.10,19,475/- towards damages. The said order is under challenge in this writ petition contending *inter alia*, that the action of the 2nd respondent in setting the petitioner *ex parte* without taking into consideration its

representation dated 25.8.2006 is arbitrary and illegal.

The learned counsel for the 1st respondent at the outset contended that against the impugned order an alternative remedy of appeal is available under Section 7-I of the Act and, therefore, without exhausting the said remedy, the petitioner cannot maintain this writ petition.

From the material placed before this court it is clear that the impugned order, which is undated, has been served on the petitioner on 15.11.2006 i.e., about three months after the petitioner was s*et ex parte.* Having kept the matter pending for about three months, the 1st respondent ought to have given a personal hearing to the petitioner before passing the impugned order on merits. Particularly since the receipt of the petitioner's representation dated 25.8.2006 in the Office of the 1st respondent is not in dispute, the procedure adopted by the 1sgt respondent cannot be said to be in conformity with the principles of natural justice. In the circumstances, existence of alternative remedy cannot be a bar to grant the relief under Article 226 of the Constitution of India and the impugned order being in violation of principles of natural justice is liable to be set aside on that ground alone.

Accordingly, without expressing any opinion on merits, the impugned order is set aside, leaving it open to the 1st respondent to pass appropriate orders afresh in accordance with law after giving a personal hearing to the petitioner with advance notice.

The writ petition is accordingly, disposed of. No costs.

(G. ROHINI, J.)

22nd November, 2006.
Note: Operative portion by wire.
Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.24210 OF 2006

22nd November, 2006.

Between:

Sangam Health Care Products Limited,
Amarchand Sharma Complex, S.P. Road,
Secunderabad, represented by its
Senior Manager (Legal), Mr. Sunil Palnitkar. .. Petitioner.

And

The Assistant P.F. Commissioner (Compliance),
Sub-Regional Office, Kukatpally,
Hyderabad and another. .. Respondents.